



America's Dairy Farmers

NATIONAL DAIRY PROMOTION AND RESEARCH BOARD

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May 26, 2004

Angela C. Snyder
Office of the Deputy Administrator
Poultry Programs
Agricultural Marketing Service (AMS) USDA
1400 Independence Avenue, SW
STOP 0256, Room 3932-South
Washington DC 20250

Re: Comments Regarding Proposed Rule to Exempt Organic Producers From
Assessment by Research and Promotion Programs
Federal Register 4/26/04, Page 22690, Docket No. PY-02-006

Dear Ms. Snyder:

We appreciate the opportunity for input regarding the proposed amendment to the Dairy Promotion and Research Order (Dairy Order) that will add a new section 1150.157 authorizing an organic exemption to dairy checkoff assessments.

As the agency administering the Dairy Order, the National Dairy Board (NDB) would like to make recommendations and comments to facilitate managing this proposed new aspect of the program.

1. Before we review specific recommendations to the proposed amendment to the Dairy Order, it is important to note that the organic exemption does not preempt or supersede any applicable state statute or regulation that mandates the payment of an assessment on milk. To that end, any "person" who would be exempt under the organic exemption would still be required to pay the assessment due pursuant to state statute or regulation unless the state had a similar exemption. It should be the responsibility of the NDB to inform the person seeking an exemption of this obligation should they be exempt under the Dairy Order. Any exemption certificate should clearly state that the certificate does not exempt the producer from payment of assessments due under state law or regulation.

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2. The organic exemption should address the assessment of dairy imports. Although the Dairy Order does not yet contain a provision for the assessment of imports, the 2002 Farm Bill provided for such an assessment. Dairy imports should not be eligible for the organic exemption. Under the Dairy Order, the "importation" of dairy products will be the activity which subjects an importer to the liability to pay the assessment. The act from which the organic exemption arises is producing and marketing a product. The assessment is due upon the importation of the product. If an act after importation of a product could result in a product being eligible for an exemption from the assessment, the exemption could arise after the assessment had already been paid. This is unworkable.
3. Paragraph (a) as presented in the proposed Rule (§1150.158(a)) should be amended to add the following sentence: "In order to be eligible under the exemption under this section, a producer must not be owned, in whole or in part, or otherwise affiliated with a person that is subject to and pays assessments to a research and promotion program administered by the USDA or that produces conventional non-organic agricultural products." This language needs to be added to prevent producers who produce both organic and conventional products from using the exemption to circumvent payment of assessments. Under the proposed Rule, a company that is subject to assessments could create a subsidiary and argue that it deals in 100% organic products and therefore should benefit from the organic exemption.

This can be highlighted as follows:

Company A is a producer that produces and markets a 100 percent organic commodity. However, Company A is a wholly owned subsidiary of Company B that produces and markets non-organic commodities. Company A is not exempt.

Company A is an importer that produces and markets a 100 percent organic commodity. However, Company A is the parent company of Company B that produces non-organic commodities. Company A is not exempt.

Company A produces and markets a 100 percent organic commodity. However, Company B has a majority ownership interest in Company A and Company B produces non-organic commodities. Company A is not exempt.

Company A is an importer that produces and markets a 100 percent organic commodity. However, Company B has a minority ownership interest in Company A and Company B produces non-organic commodities. Company A is not exempt.

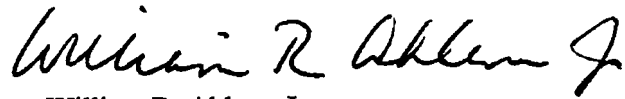
Ms. Angela Snyder

May 3, 2004

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We appreciate the opportunity to submit these comments for your consideration. Should you have any questions, please contact Wayne Watkinson at 202-842.2345.

Sincerely,

A handwritten signature in black ink, reading "William R. Ahlem, Jr." in a cursive script.

William R. Ahlem, Jr.